

**REMARKS****Claim Rejections – 35 U.S.C. § 102 and 103**

Claims 63 – 65 and 70 – 82 presently stand rejected under 35 U.S.C. 102(e) as allegedly anticipated by Kahn et al. (US 2004/0029569 A1). Claims 66 – 69 presently stand rejected under 35 USC 103(a) as allegedly obvious over Khan in view of Stadelmann (US 6,415,156). Without acquiescence in the grounds of rejection and without prejudice to pursue the original claimed subject matter at a later time (by continuation application or otherwise), the claims have been amended herein to clarify the subject matter being claimed. This rejection is respectfully traversed.

Claim 63 is independent and will be addressed first. Claim 63 relates to a method for carrying out consumer transactions at a point-of-sale establishment and, as amended, includes the steps of “automatically detecting, at a local wireless station affiliated with a point-of-sale system, the transient presence of a specific mobile wireless cellular device within proximity of the wireless station; in response to detecting the specific wireless cellular device, automatically initiating targeted radio frequency (RF) communication from the point-of-sale system addressed to the specific detected wireless cellular device via the local wireless station; receiving at the point-of-sale system, via the local wireless station, a user response entered at the wireless cellular device; automatically conveying a menu of user options to the wireless cellular device via the local wireless station; receiving and storing, at said point-of-sale system, user selections transmitted from the wireless cellular device via the local wireless station; and determining a point-of-sale transaction price based upon said user selections.”

It is respectfully submitted that the subject matter of claim 63 is neither disclosed in nor suggested by Khan or Stadelman. Kahn, in particular, has been cited as allegedly describing a technique including the steps of automatically detecting the transient presence of a wireless cellular device within the proximity of the wireless station. (See 12/23/2008 Office Action at 2, *citing* Kahn at ¶¶ 48, 30) However, it is respectfully submitted that Kahn does not disclose any method for “automatically detecting, at a local wireless station ..., the transient presence of a specific mobile wireless cellular device within proximity of the wireless station” followed by “automatically initiating targeted radio frequency (RF) communication from the point-of-sale system addressed to the specific detected wireless cellular device via the local wireless station” as required by claim 63, as amended. Rather, in the main embodiment described in Kahn, the wireless station (referred to as “MicroAdapter”) is configured to “emit a merchant programmable continuous transponder signal” that is “detectable within a short range, for example about 3 meters.” (Kahn, at ¶ 32) The main examples of this transponder signal are infra-red or Bluetooth signals. (See Kahn, at ¶ 51) Kahn does not involve any automatic detection of a wireless cellular device because the local wireless station (MicroAdapter) continuously broadcasts a transponder signal whether or not a wireless device is present, and relies upon the mobile wireless device to detect the presence of the wireless station. Far from disclosing the subject matter of claim 63, Kahn in fact teaches exactly the opposite, in which it is the mobile device—not the local wireless station—that detects the presence of the other.

In addition to not detecting a specific wireless device, Kahn also does not teach the step of “in response to detecting the specific wireless cellular device, automatically

initiating targeted radio frequency (RF) communication from the point-of-sale system addressed to the specific detected wireless cellular device via the local wireless station," as set forth in claim 63. The "continuous transponder signal" of Kahn is clearly not a "targeted" communication to a "specific detected wireless cellular device" but rather a broadcast signal that is not targeted at any device in particular. Moreover, the "continuous transponder signal" is not transmitted "in response to detecting the specific wireless cellular device," but rather is transmitted continuously, regardless of whether a wireless cellular device is present or not.

Kahn also mentions an alternative approach in which "the buyer's PTD [Portable Trusted Device] can initiate the transaction by sending a signal to the MicroAdapter," which is required "for example wherein closely spaced MicroAdapter-equipped vending machines would result in a confusing mixture of transceiver signals." (Kahn, at ¶ 32) This approach is even less relevant to claim 63, and similarly does not involve a wireless station which "automatically detect[s]" a specific wireless cellular device and then "automatically initiate[s] targeted" RF communication with the specific detected wireless cellular device. Rather, in this situation, it is the mobile wireless device (e.g., PTD) that "initiates" the communication with the wireless station. Thus, this aspect of Kahn also does not teach or suggest the unique method of claim 63.

The function and effect of the invention of claim 63 is radically different than Kahn. In Kahn, the wireless station communicates agnostically with all compatible wireless devices within range, or else the user must be specifically aware of the wireless station and use the mobile wireless device (e.g., the PTD) to initiate communication with the wireless station. Apart from the user-initiated transaction, Kahn

apparently assumes that the user's mobile wireless device is continuously scanning the short-range communications emanating from any nearby wireless station(s) (the MicroAdapter(s)), and that it automatically receives and processes information from those wireless stations—which can be particularly problematic where multiple MicroAdapters exist in the same vicinity. Although recognizing this problem, Kahn does not provide an adequate solution, other than having the user initiate a transaction in some manner with a particular MicroAdapter.

By contrast, according to claim 63, the wireless station “automatically detect[s] ... the transient presence of a specific mobile wireless cellular device within proximity of the wireless station.” This may be done, for example, by having the wireless station scan the cellular frequencies used by a local cellular base station that co-exists in the same vicinity as the wireless station associated with the point-of-sale system. (See Specification at, e.g., ¶¶ 29-30) This potentially enables a system in which the mobile wireless devices can be detected much further away than using infra-red or Bluetooth techniques relied upon by Kahn. It also provides the capability to establish an unambiguous communication channel from the wireless station to the mobile wireless device, despite the existence of any competing wireless point-of-sale systems in the same locale. Because the wireless station operates by detecting the transient presence of a “specific mobile wireless cellular device,” it can initiate communication with that specific wireless cellular device in a variety of ways, including by paging the specific wireless cellular device. This capability also allows the wireless station to contact the wireless cellular device without any need for a separate communication medium—such

as infra-red or Bluetooth—but rather using the existing RF capability of the wireless cellular device.

Among other things, the novel technique provided by the steps of claim 63 allow a wireless method of commerce that has far greater potential applicability than that described in Kahn, without the need for specialized additional communication hardware beyond the regular wireless cellular hardware inherent in all wireless cellular devices.

Accordingly, it is respectfully submitted that claim 63 is novel and non-obvious in view of Kahn.

The unique process of claim 63 is also not disclosed in nor suggested by the other cited reference, Stadelmann. In that system, the customer must dial the call number of the desired services provider to order a product or a service from the provider. (See Stadelmann, at col. 3:3-11) This type of operation does not involve the steps of “automatically detecting, at a local wireless station ..., the transient presence of a specific mobile wireless cellular device within proximity of the wireless station” or “automatically initiating targeted radio frequency (RF) communication from the point-of-sale system addressed to the specific detected wireless cellular device via the local wireless station” as required by claim 63, as amended.

Accordingly, it is respectfully submitted that claim 63 is allowable over the two cited items.

### **Dependent Claims**

Claims 64 – 82 depend from claim 63, and, it is respectfully submitted, should be allowable as depending from an allowable base claim. Moreover, it is believed that the dependent claims contain additional independently novel features.

By way of example, claim 73 recites that local wireless station automatically detects the transient presence of the mobile wireless cellular device by “monitoring one or more frequencies and/or channels utilized by a base station of the cellular network, said base station having a coverage area overlapping said microcellular region,” and “detecting communications between the wireless cellular device and said base station on said frequencies and/or channels.” For this subject matter, the Office Action refers to paragraphs 12 and 13 of Kahn. However, those paragraphs do not describe these steps. Kahn does not describe that the MicroAdapter (wireless station) “automatically detect[s]” the transient presence of a specific wireless cellular device by “monitoring one or more frequencies and/or channels used by a base station of the cellular network,” and by “detecting communications between the wireless cellular device and said base station.” Rather, Kahn teaches the use of an infra-red, Bluetooth or similar dedicated communication channel for wireless communication.

Moreover, although Kahn's mobile wireless device may have cellular capability, there is no indication that the MicroAdapter (wireless station) uses cellular channels to detect the presence of the mobile wireless device or, even if it did, that it would then “in response to detecting the specific wireless cellular device, automatically initiat[e] targeted radio frequency (RF) communication from the point-of-sale system addressed

to the specific detected wireless cellular device via the local wireless station” as required by claim 73 when read in light of independent claim 63, as amended. Thus, it is respectfully submitted that claim 73 should be independently allowable over the cited items.

Claim 74 recites that the local wireless station “automatically detects the transient presence of the wireless cellular device by receiving a message from said cellular network that the wireless cellular device is within or nearby said microcellular region.” This subject matter is also not taught in nor suggested by the cited items. While the Office Action cites paragraphs 57, 70, 76, 105 and 109 of Kahn, those sections of Kahn only establish that a user can “dial the number associated with the MicroAdapter and effect a purchase” using the PTD (see Kahn at ¶ 57; see *a/so* ¶ 105, “The MicroAdapter may also receive cellular data calls from the buyer via the wireless carrier/ISP, ...”), or that the MicroAdapter and/or PTD may have cellular capabilities, but it is respectfully submitted that they do not teach or suggest a wireless station that “automatically detects the transient presence of the wireless cellular device by receiving a message from said cellular network that the wireless cellular device is within or nearby said microcellular region.” In Kahn, the call from the PTD to the MicroAdapter is an ordinary call that could be placed from anywhere that the cellular network provides service—and does not provide any particular information as to the geographic location of the PTD (mobile wireless device).

**Reservation of Right to Challenge Cited Item(s)**

While Applicant has addressed the cited items on the merits, this should not be construed as an admission that the cited items constitute prior art as against the claimed invention. Applicant reserves the right to antedate the cited item(s) pursuant to the appropriate rules, laws, and regulations if deemed necessary to do so.

Likewise, Applicant's election to address the cited items on the merits should not be construed as an admission that they provide an enabling disclosure. Applicant reserves the right to challenge the sufficiency of the cited items at a later point in time, including in any post-issuance proceeding or suit, if appropriate.

**New Claims**

New claims 83 – 85 have been added. These are dependent claims and are believed to be allowable for at least the same reasons as the claim(s) from which they depend.

Claim 83 depends from claim 72, and recites that the transient presence of a specific mobile wireless cellular device within proximity of the local wireless station is detected "by receiving notification at the wireless station from the cellular network when the mobile wireless cellular device has entered a cell serviced by the cellular network that geographically overlaps with a wireless communication region of the local wireless station." While claim 83 has some overlap with claim 74, it also has certain additional details.



Claim 84 also depends from claim 72, and recites the further steps, prior to automatically initiating targeted radio frequency (RF) communication with the specific detected wireless cellular device via the local wireless station, of “transmitting a validation request from the point-of-sale system to the cellular network, said validation request including a cellular telephone number of the specific mobile wireless cellular device,” and “receiving, at the point-of-sale system, a response to the validation request indicating whether an account associated with the specific mobile wireless cellular device exists.” Claim 85 depends from claim 84, and recites that the local wireless station “does not initiate communication with the specific mobile wireless cellular device if the response to the validation request indicates the lack of an account.” These steps are nowhere disclosed in nor suggested by the cited items. For example, in Kahn, the MicroAdapter transponder continuously transmits to all mobile wireless devices within its communication range, or else provides that the user directly initiates communication. Kahn does not disclose or suggest, among other things, the step of validating a specific mobile wireless cellular device after automatic detection but prior to initiation of communication between the two.

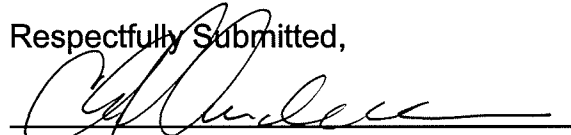
**Request for Allowance**

The Examiner is kindly requested to enter the amendments presented herein. The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any unresolved issue remains, the Examiner is invited to contact the undersigned by

telephone to discuss those issues so that the Notice of Allowance can be mailed at the earliest possible date.

It is believed that the instant application is in condition for final allowance, and, accordingly, issuance of a notice of allowance is earnestly solicited.

Respectfully Submitted,



Christopher A. Vanderlaan  
Registration No. 37,747

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**IRELL & MANELLA LLP**

1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067  
Telephone: (310) 277-1010  
Facsimile: (310) 203-7199  
Customer No. **29000**